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S. HRG. 99-172

NOMINATION OF ANNE E. BRUNSDALE

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

THE NOMINATION OF
ANNE E. BRUNSDALE TO BE A MEMBER OF THE INTERNATIONAL TRADE COMMISSION

JULY 24, 1985

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THE NOMINATION OF ANNE E. BRUNSDALE

WEDNESDAY, JULY 24, 1985

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The committee met, pursuant to notice, at 2:09 p.m., Hon. John C. Danforth presiding.

Present: Senators Danforth, Heinz, Durenberger, Mitchell, and Pryor.

[The press release announcing the hearing, the opening statement of Senator Durenberger, and Ms. Brunsdale's resume follow:]

Press Release No. 85-057

P R E S S R E L E A S E

FOR IMMEDIATE RELEASE
Thursday, July 18, 1985

CONTACT: Sam Richardson
(202) 224-4515

COMMITTEE ON FINANCE TO REVIEW INTERNATIONAL TRADE PANEL NOMINEE

The nomination of Anne E. Brunsdale as a new member of the International Trade Commission has been scheduled for a July 24, 1985, hearing before the Senate Commitee on Finance, Committee Chairman Bob Packwood (R-Oregon) announced today.

Senator Packwood said the nomination hearing for Ms. Brunsdale is set for 2 p.m., Wednesday, July 24, 1985, in Room SD-215 of the Dirksen Senate Office Building in Washington.

Senator John C. Danforth (R-Missouri), Chairman of the International Trade Subcommittee of the Committee on Finance, is to preside at the hearing.

Ms. Brunsdale is currently a resident fellow at the American Enterprise Institute for Public Policy Research in Washington.

The ITC commissioner-designee has been associated with the American Enterprise Institute since 1970. She has been editor of the Institute's Regulation magazine since 1977. Ms. Brunsdale has also served on two different occasions with the Central Intelligence Agency and, in 1976, worked in President Ford's Office of Communications.

If confirmed, Ms. Brunsdale would fill the Commissioner's term ending on June 16, 1993.

President Ronald W. Reagan nominated her for the ITC post earlier this year.

P.R. #85-057

STATEMENT OF SENATOR DANFORTH

NOMINATION OF ANNE S. BRUNSDALE

I WELCOME TODAY PRESIDENT REAGAN'S NOMINEE FOR COMMISSIONER OF THE INTERNATIONAL TRADE COMMISSION, ANNE BRUNSDALE, OF WASHINGTON, D.C. I AM PLEASED TO NOTE THAT, FOLLOWING THE PATTERN OF RECENT NOMINATIONS CONSIDERED BY THE COMMITTEE, PRESIDENT REAGAN AGAIN HAS CHOSEN A PERSON OF FINE QUALIFICATIONS TO CARRY OUT THE GOVERNMENT'S RESPONSIBILITIES IN THE VERY IMPORTANT POSITION FOR WHICH SHE HAS BEEN NOMINATED.

FOR THE RECORD, WE HAVE REVIEWED THE FINANCIAL DISCLOSURE FORM OF THE NOMINEE WHICH HAS ALSO BEEN FILED WITH THE OFFICE OF GOVERNMENT ETHICS. IN ADDITION, WE HAVE RECEIVED THE LETTER FROM THE DIRECTOR OF GOVERNMENT ETHICS APPROVING MS. BRUNSDALE'S COMPLIANCE WITH THE ETHICS IN GOVERNMENT ACT, AND THAT LETTER WILL BE MADE A PART OF THE RECORD. I AM SATISFIED THAT THERE ARE NO PROBLEMS IN THIS AREA.

MS. BRUNSDALE CURRENTLY IS A RESIDENT FELLOW OF THE AMERICAN ENTERPRISE INSTITUTE FOR PUBLIC POLICY RESEARCH. SHE HAS BEEN WITH THE INSTITUIE SINCE 1967 AND MANAGING EDITOR OF REGULATION, A BIMONTHLY MAGAZINE PUBLISHED BY AEI, SINCE 1977. SHE HAS HELD VARIOUS POSITIONS IN MANAGEMENT AND INTELLIGENCE, SERVING WITH THE CENTRAL INTELLIGENCE AGENCY FROM 1950-1956. MS. BRUNSDALE RECEIVED HER BACHELOR'S AND MASTER'S DEGREES FROM THE UNIVERSITY OF MINNESOTA AND A SECOND MASTER'S DEGREE FROM YALE UNIVERSITY.

I AM PLEASED TO HAVE MS. BRUNSDALE BEFORE US TODAY, AND TO HAVE MY DISTINGUISHED COLLEAGUES FROM MINNESOTA, SENATOR DURENBERGER AND SENATOR BOSCHWITZ, HERE TO INTRODUCE MS. BRUNSDALE TO THE COMMITTEE.

ANNE E. BRUNSDALE

Career Summary

AMERICAN ENTERPRISE INSTITUTE FOR PUBLIC POLICY RESEARCH: 1967-present.

1983-Present: Resident fellow of the institute.

1977-Present: Managing editor of Regulation, a bimonthly magazine described by the Washington Post as "must reading for persons interested in regulatory matters." Launched the magazine and, since then, have been responsible for its content and management--commissioning and overseeing work from leading thinkers on regulatory policy.

1970-1977: Director of Publications. Created AEI's publications department, exercising full editorial and production responsibility for a program that quintupled in size, reaching 90 titles a year.

1967-1970: Research associate. Wrote and edited studies on social and economic policy; designed and managed a computerized talent bank.

OTHER EXPERIENCE:

1975-present: Manage family farming interests in eastern North Dakota.

1966-1967: Free Society Association, Washington, D.C. Served as associate director of publications for public policy association.

1957-1965: Craig-Hallum Corp., Minneapolis, Minn. Served as investment analyst and then V.P. for research of a regional investment firm.

1947, 1950-1956: Central Intelligence Agency. Served as intelligence officer; selected for senior executive development program.

POLITICAL ACTIVITIES: Have held leadership positions in Republican politics in Minneapolis (1957-65) and the District of Columbia (1984), and temporarily left regular job during two national campaigns:

1976 (Sept.-Nov.): Office of Communications, Executive Office of the President. Responsible for President Ford's issue briefing books.

1964 (Aug.-Nov.): Research associate in Goldwater-for-President campaign, Republican National Committee, Washington, D.C.

EDUCATION:

Yale University: M.A. (with honors) in government, 1949; completed examinations for Ph.D. in government and international relations, 1950 (Cowles Scholar, 1948-1950).

University of Minnesota: M.A. in Far Eastern area studies, 1946; B.A. (magna cum laude) in political science, 1945.

Senator DANFORTH. This is a hearing on the nomination of Anne Brunsdale of Washington, D.C., to be a member of the International Trade Commission.

For the record, I want to indicate that we received the financial disclosure form of the nominee. It has also been filed with the Office of Government Ethics. In addition, we have received the letter from the Director of Government Ethics proving Ms. Brunsdale's compliance with the Ethics in Government Act. That letter will be made part of the record. I am satisfied that there are no problems in this area.

[The letter follows:]

United States of America
Office of Government Ethics

Office of Personnel Management
Washington, D.C. 20415

JUL 10 1985

Honorable Robert Packwood
Chairman, Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Anne E. Brunsdale, who has been nominated by President Reagan for the position of Commissioner, International Trade Commission.

We have reviewed the report and have also obtained advice from the International Trade Commission concerning any possible conflict in light of the Commission's functions and the nominee's proposed duties. Ms. Brunsdale has agreed to recuse herself in the event any matter should arise before the Commission involving any of her interests. Based thereon, we believe that Ms. Brunsdale is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David H. Martin
Director

Enclosure

Ms. Brunsdale currently is a resident fellow of the American Enterprise Institute for Public Policy Research. She joined the Institute in 1967 and has served as managing editor of AEI's bimonthly magazine, "Regulation," since 1977.

Prior to joining AEI, she held various positions in intelligence and business, serving with the Central Intelligence Agency from 1950 to 1956 and with a Minneapolis investment firm from 1957 to 1965. She received her Bachelors and Masters Degrees from the

University of Minnesota, and a second Masters Degree from Yale University.

We are delighted to have you here, Ms. Brunsdale and delighted to see Senator Durenberger with you.

Senator, do you have any comments?

Senator DURENBURGER. Briefly, Mr. Chairman.

You have given the highlights of Anne Brunsdale's background. I am not here in my capacity as Chairman of the Intelligence Committee to discuss her attributes as an intelligence agent but as a fellow Minnesotan and a person who is quite proud of what Anne Brunsdale has accomplished over her years in her professional career.

You outlined some of the background, the educational qualifications and the experiental qualifications that go back—I hate to say three decades.

But I would say, Mr. Chairman, as I have had the opportunity to serve here with you and the other members of this committee and have been involved with international trade issues, that it is not only her specific experience in these earlier posts, but her knowledge of Government and industry in this country that equip her so well to carry out the duties assigned to the Commissioners of the International Trade Commission.

I think, as I look at the Commission, it requires a Commissioner to weigh evidence with care and to probe for detail, and that is what Anne Brunsdale has done all of her life. If there is a common thread in her background, from foreign intelligence to domestic policy and private policy, it has been the precision of her ability to identify cause and effect in difficult situations that call for dispassionate and objective analysis. It seems to me that these are the premier qualities required of an ITC Commissioner.

And for that reason, and for a variety of other reasons that go to her professional qualifications, I am anxious to recommend her to this committee for your consideration. And I hope we can recommend favorably that her nomination be confirmed as quickly as possible.

I think my colleague is going to be here shortly. I know he intended to be here and represent himself in this matter.

Senator DANFORTH. Thank you very much, Senator Durenberger.

Ms. Brunsdale, do you have any statement that you would like to make?

STATEMENT OF ANNE BRUNSDALE, NOMINEE FOR MEMBER OF THE INTERNATIONAL TRADE COMMISSION

Ms. BRUNSDALE. Thank you, Senator.

I do not have a prepared statement. But I do wish to say that I am greatly honored by the President's decesion to nominate me for the post of ITC Commissioner, and I am also greatly honored to be appearing this afternoon before this committee to seek your confirmation of nomination.

Let me add that I deeply apprecrate the support I have received from Senators Boschwitz and Durenberger and I am very grateful to Senator Durenberger for his kind and generous remarks.

Finally, I wish to say that, if I am confirmed, I will discharge my responsibilies with objectivity and independence.

Thank you very much.

Senator DANFORTH. Thank you very much.

Senator Durenburger, if you would like to stay you are certainly welcome. Oh, you are going to stay up here, I guess.

Senator DURENBURGER. Well, I can go either place. [Laughter.]

Senator DANFORTH. Whatever you want to do. Do your thing.

Senator DURENBURGER. I just want our colleagues to see how impressed I am with this nominee.

Senator DANFORTH. This is terrific. We need you there on a tax bill; maybe we will get some good answers.

Ms. Brunsdale, you don't have any particular background in this area. That is no impediment, in my view.

There are a variety of people around Washington in various levels of Government who don't necessarily have the background for the job.

I think what would concern at least this Senator is whether you bring to the ITC any particular preconceived ideas or predispositions which would in any sense bias you in making objective decisions.

The ITC has very important responsibilities, among them the responsibility for determining whether or not there is injury in section 201 cases and in subsidy cases, and one of the things that happens, particularly in this administration, unfortunately, is that people are very willing to stamp the label "protectionist" on anything, including a simple request that the law be enforced.

For example, I have just been handed a letter from our new U.S. Trade representative stating that he opposes strongly S. 1404, which it is his privilege to do. That is the bill dealing with unfair trade practices by Japan. But he says in the fourth paragraph of his letter,

> Our disastrous experience during the 1930s after passage of the Smoot-Hawley Tariff Act of 1930 shows that protectionist legislation is not the answer to trade problems.

Now, there must be, somewhere, a rubber stamp with that sentence on it. Somebody in the administration has gone out to the stationary store and bought a rubber stamp which has the words "Smoot-Hawley Tariff Act," and which has the word "protectionist" on there, and they stamp it on everything. And it is wonderful. What it says is, why think? You know, we don't have to think about anything; everything is protectionist.

A 201 case involving shoes? Well, we are told by the President's new Budget Director designate, "Well, that's protectionist. Protectionist legislation; too expensive."

The new USTR claims that a bill which says "enforce the law, enforce section 301," that's protectionist, the Smoot-Hawley Tariff Act.

So, it doesn't bother me that you don't have any background in this area, because, you know, very few people do and that's fine. But me hope would be that, at the very least, you don't bring to the job some rubber stamp so that everything is stamped "protectionists."

Sometimes when people don't have specific backgrounds, and there has been cases like this, I guess, in the past at the ITC, they do bring a lot of philosophical baggage to the job. We think that we in the Congress are in the business of philosophy—all philosopher kings or queens in the Congress—and that we are in the business of passing laws, and we are in the business of setting out legislative history and the legislative purpose in passing laws. And our hope would be that the ITC and other agencies of government, instead of bringing prefab philosophies into their jobs, would at least let us do the philophizing and try their best to enforce the law or apply the law as it is written, without this preconceived philosophy.

So that is a long—it certainly is not a question; I guess it is a harangue. I haven't even finished reading Clayton Yeutter's letter. I don't think I want to. [Laughter.]

Senator DANFORTH. But all he has to use are the words "Smoot-Hawley" and "protectionist," and he doesn't have to go to a page and a half, I know the answer.

But I guess the question is this: Do you feel that you are in this job in order to superimpose the Anne Brunsdale philosophy of trade policy on the country?

Ms. BRUNSDALE. Senator, I certainly do not, nor would I act in such a manner if I were confirmed. I take an oath very seriously. And if I am confirmed, I would be taking an oath to enforce the laws that Congress has entrusted to the care of the ITC. I assure you that I would do my very level best to understand those laws, to understand the precedents, to understand the practice of the Commission, to understand the facts of each particular case that would come before me, and to arrive at the best, most objective judgment that I could.

I would bring no preconceived notions to the Commission of the kind that would get in the way of that approach to decisionmaking.

Senator DANFORTH. Well, thank you very much, and of course, I am delighted to hear that. To have a smart person—and you are a smart person—who has an open mind I think is all we could ask for.

Senator Heinz?

Senator HEINZ. Mr. Chairman, thank you. I welcome Anne Brunsdale to the committee. She comes very well introduced, courtesy of Senator Durenberger, and I only want to second your comments, Mr. Chairman, that indeed in my meetings with Ms. Brunsdale I found her a very bright, able lady.

Ms. Brunsdale, you do come without the benefit of any background in the trade area. When we met I put you on notice that you had some time in which to steep yourself in some of the legalities in this trade area, and it is my understanding that you have been burning the midnight oil and you are considerably better informed on many of the issues we discussed than when we first met. So I would like to get your responses to a number of questions, some of which or maybe the majority of which will not be any surprise to you.

Is it the intent of Congress that the material injury standard in the Trade Agreements Act of 1979 be higher than the earlier injury standard in prior law?

Ms. BRUNSDALE. No, it is not. The intent of Congress is that the standard of injury spelled out in the 1979 act is the same as the standard reflected in the Commission's practice prior to 1979.

Senator HEINZ. Do you think that the standard—let me go back on that question. Is it your belief that Congress felt that previous members of the Commission had misinterpreted what Congress meant by "material injury" and had on occasion interpreted "material injury" to be a higher standard than the definition?

Ms. BRUNSDALE. I am not sure I understand the thrust of that particular question, Senator. Let me just say that I believe that the general practice the Commission followed with respect to the material injury standard before the 1979 legislation is the one that you in the Congress understood you were writing into that legislation.

Senator HEINZ. "Not immaterial," et cetera?

Ms. BRUNSDALE. Not inconsequential, and not unimportant.

Senator HEINZ. Do you think that the standard for a preliminary determination of injury in a dumping or a CVD case is a lower standard than the final determination in the same case?

Ms. BRUNSDALE. No, I do not. As I understand it, the injury standard is the same for both determinations. At the preliminary stage the Commission decides whether there is a reasonable indication of material injury at that point. Thus, the amount of evidence required is less, but the standard is the same.

Senator HEINZ. Well, all I can say is, you have been doing your homework.

Do you think the International Trade Commission is or should be an agency involved in the making—the making—of trade policy?

Ms. BRUNSDALE. No, sir; not in general, and only in a limited way. That is, from time to time the ITC receives queries from Congress, or the USTR asking about particular points, and it responds with objective studies on those points. To that extent it does participate in the underpinnings of the policymaking process.

Senator HEINZ. Would you construe section 337 of the Tariff Act of 1930 broadly so as to include violations in cases of predatory practices against American industries, as well as the patent infringement cases that have been traditionally brought under that section?

Ms. BRUNSDALE. I honestly, at this moment, do not know.

Senator HEINZ. Informationally, patent infringement cases have been what have generally been brought. The law seems to be much more broadly written than that, to include a wide variety of unfair practices; but you say you don't know very well.

Do you think the International Trade Commission should exercise its authority to issue rules or regulations if it seems that is an appropriate way to deal with a trade problem? For example, a patent infringement problem?

Ms. BRUNSDALE. I understand that the International Trade Commission has rulemaking authority, under section 337, and that a Finance Committee report has affirmed that to have been the intent of Congress. I would think, tentatively, that rulemaking would be an appropriate way to handle certain kinds of section 337 cases.

Senator HEINZ. There will be a short pause while I assume the Chair.

[Pause.]

Senator HEINZ. My time has expired. I will have some more questions for you.

Senator Pryor?

Senator PRYOR. Thank you, Mr. Chairman.

Ms. Brunsdale, before the Senate right now—not under consideration but at least introduced in the Senate—is a Senate Bill number 680. It is the Textile and Apparel Trade Enforcement Act. It now has 53 cosponsors in the Senate, 287 cosponsors in the House. I know that this administration, and most administrations, naturally, prefer to deal with these types of problems through administrative and negotiating opportunities rather than legislative channels, but, in looking at Senate bill 680, and going back to the line of questioning of Senator Danforth, do you think that this particular bill is a "protectionist" piece of legislation?

Ms. BRUNSDALE. Senator Pryor, that bill is a large and comprehensive piece of legislation—and one. I have not had time to read it. All I know about it comes from the sketchy reports that I have seen in the newpapers. I would be reluctant on the basis of that to make a judgment.

Senator PRYOR. I can understand that.

This goes to the question of the independence of Commissioners: Let's presume this legislation caused some concern to the administration. (The administration may have taken a position on it, I don't know.) If you were a member of the Commission and at any point had to render judgment as to injuries by textile imports to the domestic industry or remedies for domestic producers, and if you were sitting as a Commissioner about to render a decision on injury, or on what remedies might be, and the President of the United States called you up the night before the decision was going to be made and said, "Look this is going to really jeopardize our trade relationships and our negotiating posture, and we hope that you will consider looking at the administration's position"—what sort of an impact would the President's phone call or maybe Mr. Don Regan's phone call have upon Commissioner Brunsdale?

Ms. BRUNSDALE. The ITC is by law an independent fact-finding and regulatory agency, and Congress has sought to insure its independence by legislating a variety of institutional safeguards. It is incumbent on every Commissioner to guard that independence well. If I become a commissionor, I will apply the law objectively as I undestand that Congress has written it and the President has signed it. I would not have trouble on that score.

Senator PRYOR. On the issue of the Canadians exporting to this country absolutely unprecedented supplies of timber and wood products, which are gleaned from the national forest there in Canada, disrupting our timber industry significantly, how do you view what the Canadians are doing in this area, and how might you look at what the Canadians are doing and decide what injury we have sustained or, more particularly, what remedy might be applied for those who might petition the International Trade Commission?

Ms. BRUNSDALE. That is a hypothetical question concerning a matter that might come before the Commission. I understand certain aspects of the Canadian lumber issue did come before the Commission some months back, and a new investigation is about to

be started, if it has not already started. I just think it would be much better, sir, if I didn't make any comment.

Senator PRYOR. Well, are you aware of the Canadian problem let's say with the timber and the importation problem that we do have now in our own domestic industry?

Ms. BRUNSDALE. Yes, I am.

Senator PRYOR. I am proud to see on your résumé—and I'll bet Senator Durenburger had you do this—that you managed a farming interest, an agriculture interest. So I think that is very, very significant, and I just want to ask this question.

Senator DURENBURGER. She is proud of that on her own; I didn't suggest it.

Senator PRYOR. Well, anyway, that caught my attention because of the fact of the tremendous subsidies today that our farmers are forced to compete with unfairly with other countries. And I am wondering if you might be aware of the signficant amount of subsidies that Brazil, Argentina, and others are giving their farmers, which in my own opinion and other around here, severely hurts the American farmer. Are you aware of that?

Ms. BRUNSDALE. Yes, I am aware of that general problem, very much so.

Senator PRYOR. Would it be "protectionism" if we attempted to do something about that?

Ms. BRUNSDALE. Well, I would think, Senator, that might depend on what we tried to do. If we took action to open foreign markets now closed to us, I do not think that would be protectionist; it would be a very good idea.

Senator PRYOR. I may have a few more questions, but my time has elapsed. Thank you very much.

Ms. BRUNSDALE. Thank you, sir.

Senator HEINZ. Ms. Brunsdale, several of the recent section 337 cases—we were talking about 337 a moment ago—have raised the question of whether a domestic industry in fact exists if actual production of the product overseas occurs with elements such as design, engineering, packaging, shipping, marketing, advertising, are being done in the United States. Under what circumstances do you believe a U.S. industry would exist even if the actual production of the product, which might just be the minimal assembly of a few things or might be much more substantial than that, under what circumstances do you believe a U.S. industry would exist?

Ms. BRUNSDALE. I believe, Senator, that Commission practice on that question has been variable. In some cases the Commission has said there must be manufacturing in this country; in other cases it has taken the position that a significant marketing, packaging, or perhaps, product design effort in this country would be sufficient.

I believe the general sense of these decisions has been that, if significant value added comes from the U.S. operations, than a U.S. industry said to exist even though there is no manufacturing on these shores.

Senator DANFORTH. There is a vote on the floor. It is halfway over now, so we are going to recess for about 15 minutes.

[Whereupon at 2:36 p.m., the hearing was recessed.]

Senator HEINZ. We will resume our hearing. Senator Danforth is going to be unable to return, at least for some time. He has a bill

from the Commerce Committee that is coming to the floor, so he must be present to manage it there.

When we adjourned the hearing I had just asked a question regarding section 337, which I think you completed giving your answer to.

Ms. BRUNSDALE. Yes, sir.

Senator HEINZ. Let me move along, then, to a question of what the difference is, if any, in the standard of injury for a fair trade case, section 201, an escape clause case, versus an unfair trade practice case, a CVD or dumping case. What is the difference in the standard of injury there?

Ms. BRUNSDALE. The injury standard is serious injury for a fair trade case—section 201—and material injury for a dumping or countervailing duty case (title III). Serious injury is higher, tougher to meet, than material injury.

Congress has provided that the causality standard also be higher in fair trade cases. For 201 cases, the law requires that rising imports be a substantial cause of the injury. And it defines "substantial cause" as a cause that is important and not less important than any other cause. For title VII cases, in contrast, Congress required only that the material injury be brought about by reason of imports. In other words, imports have to be "a" cause; but they don't have to be the most important cause.

Now, for section 337 cases, once again the standard is a little bit lower than in a 201 case. I think—let me see if I can remember this—it is an unfair method of competition or unfair act in the importation of a product, the effect or tendency of which is to substantially injure or destroy an economically and efficiently operating industry. That is the main standard—which, as I say, is a bit lower than the 201 standard.

Senator HEINZ. Would you say that is higher than the title VII standards?

Ms. BRUNSDALE. It seems to me it is a little higher. Yes, sir.

Senator HEINZ. I think Senators Danforth and Pryor were touching on this in one or two of their questions, but what is the appropriate relationship between a Commissioner and the administration? Should you allow yourself to be lobbied on cases by the administration?

Ms. BRUNSDALE. I think the appropriate relationship between the administration and an ITC Commissioner could be characterized by the phrase "respectful distance." If I were to become a Commissioner, I wouldn't mind talking with members of the administration about some of these things. But the word "lobbying" implies pressure. I certainly wouldn't want to find the Administration putting pressure on me or thinking that the pressure might be successful.

Senator HEINZ. What about with Congress? Should Members of Congress seek to pressure you? Should you turn us away?

Ms. BRUNSDALE. I don't think I should turn you away, and I don't think we should pressure each other. I think from time to time we would want to talk, to trade views, and to learn from each other. I would certainly want to learn from this committee and its staff if I were confirmed. But pressure is a different matter. I wouldn't think that that would be appropriate.

Senator HEINZ. Going back to some of the laws that you would administer, what criteria would demonstrate to you a threat of serious injury? A threat of serious injury.

Ms. BRUNSDALE. Yes, sir; the criteria spelled out in section 201 are mostly those kinds of economic and financial events that indicate that imports will be a rising. Now, those kinds of things include an increase in capacity in the foreign country, the movement of product into the distribution chain, rising inventories on the part of importers here in this country, and so forth. Other factors would be falling profits or employment in the domestic industry.

Senator HEINZ. What about simply an increase in imports that looked like it——

Ms. BRUNSDALE. Could get larger?

Senator HEINZ. Could get larger.

Ms. BRUNSDALE. Yes; that would certainly be one of them.

Senator HEINZ. How would you define the relevant domestic industry in a factual situation in which a large part of the production of a particular finished product is subcontracted?

Ms. BRUNSDALE. I draw a blank. I am sorry, I cannot answer that question.

Senator HEINZ. Do you believe that an industry already damaged by a recession is statutorily more vulnerable to injury from imports?

Ms. BRUNSDALE. The trade statutes say nothing about the effect of recession and how to balance that off against other effects. It would certainly seem odd to me that it would be more difficult for an industry to get relief in a recession than in good times. I gather that the Commission's practice on this issue is somewhat variable.

Senator HEINZ. What is your sense? Should you take those kinds of economic conditions—a recession or the lack of one—into account? Or should you just decide whether there is serious injury?

Ms. BRUNSDALE. I really don't know, Senator. If you will permit me, I think that is the kind of issue on which I should not take a position until I have had the opportunity to work through it once or twice in the context of actual cases.

Senator HEINZ. The case that brings it to mind is the 201 auto case back in 1979-80.

What economic criteria should the Commission examine in determining material for serious injury? And what are the most indicative criteria to your mind?

Ms. BRUNSDALE. The statute directs the Commission to look at the volume of imports, subject to investigation, the effect of those imports on prices of like products, and the effect on domestic producers of those products.

Senator HEINZ. Are any of those more or less indicative, to your mind?

Ms. BRUNSDALE. I would think one would want to look at all of them very carefully.

Senator HEINZ. If foreign government subsidies are but one of several factors which could possibly be causing injury to a domestic industry, do you believe the Commission should make an affirmative preliminary determination in a countervailing duty case?

Ms. BRUNSDALE. Yes.

Senator HEINZ. Under what circumstances do you believe that the Commission should self-initiate a case under section 337?

Ms. BRUNSDALE. I don't really know.

Senator HEINZ. What weight would you ascribe to the alleged margins of dumping or subsidization in making a preliminary determination?

Ms. BRUNSDALE. A preliminary determination of injury? As I understand it the margin of dumping is irrelevant to a finding of material injury in Title VII cases, whether preliminary or final. I gather that there is legislative history suggesting the margin of dumping would be a useful factor to consider in the causation analysis. It may also be relevant to threat-of-injury determinations.

Senator HEINZ. I think my time has expired.

Mr. Chairman?

Senator DANFORTH. Do you have any further questions to ask?

Senator HEINZ. A few.

Senator DANFORTH. Why don't you just complete your questions, then Ms. Brunsdale will be off the hook.

Senator HEINZ. What criteria would you use in determining what import relief is necessary to prevent or remedy an injury in an escape-clause case?

Ms. BRUNSDALE. I am not in a position at this time to recite for you specific criteria. But let me describe for you in general how I think one would want to go about making that determination.

The statute says that the Commission shall find the amount of the increase in or imposition of any duty or import restriction "necessary to prevent or remedy the injury." One would want to look very carefully at the cause, the nature and the size of the injury, and try to match a remedy to those factors, because the statutory requirement is to propose a course of action that will prevent or remedy the injury.

The alternative to recommending a duty or quantitative restriction would be to recommend adjustment assistance if the Commissioner believes that assistance of that kind would be an effective remedy in that particular case.

Senator HEINZ. Do you believe that a Commissioner who has made a negative determination in an escape-clause case should participate in making a remedy recommendation if the Commission has found affirmatively?

Ms. BRUNSDALE. If I may, I would like to answer that in terms of what has been the practice and the shift in practice as it occurred relatively recently.

I understand that for some time the Commissioners who voted negatively on the injury question did not vote on the remedy. In recent years, this has changed. Several commissoners have argued that even though they vote negatively on injury in a case, they are required to or may vote on remedy. There are three or four bits of legislative history that buttress that argument.

Senator HEINZ. Do you believe that the injury standard in section 201 is higher, lower, or the same as in article 19 of the GATT?

Ms. BRUNSDALE. I think you've got me.

Senator HEINZ. All right, article 19 is the basis for the escape clause provision.

Ms. BRUNSDALE. Yes, I understand that. But I haven't read Article 19, so I don't know precisely what its injury standard is.

Senator HEINZ. All right.

Do you believe the Commission should cumulate imports of like products in dumping and countervailing duty cases proceeding at the same time?

Ms. BRUNSDALE. The 1984 law requires that the Commission shall cumulate imports from various countries if the imports are subject to investigation, are marketed within a reasonably coincident period, and are sufficiently like each other. This is now a mandatory activity for the Commission, whereas in the past the Commission had the freedom to decide whether it wished to cumulate or not.

Senator HEINZ. Do you believe it is either appropriate or consistent with the law and congressional intent for the Commission to establish a specific import penetration ratio below which injury could not be found?

Ms. BRUNSDALE. I guess I really don't know, except to say that I find nothing in statute about it. There is no specific statutory reason to establish such a presumption.

Senator HEINZ. Would such a presumption which talked only in terms of the volume of imports necessarily imply that the effect on prices or effect on producers therefore would become irrelevant?

Ms. BRUNSDALE. Well, clearly the statute says that one should look not only at import volumes, but also at the effect imports are having on prices and on producers. I will have to think about this one, sir.

Senator HEINZ. Well it seemed to me the logic of what you said earlier, which is that the economic criteria, volume of imports, prices, producer effects, those all have to be weighed, and that if one established a threshold below which everybody dropped and it didn't make any difference if the producers were going bankrupt or how low the prices were, but there was just a fractional import penetration, that it would be difficult to reconcile that answer with the earlier answer you gave.

Ms. BRUNSDALE. I think so. What the Commissioner should do is look at the facts of the case, look at the law, and proceed accordingly.

Senator HEINZ. The United States has lost some 600,000 jobs in manufacturing since 1981. Most of these jobs have been lost in heavily import-sensitive industries. Do you see a role for effective import relief under existing trade laws in stemming this tide of job losses?

Ms. BRUNSDALE. Could you repeat the last part of the question? I didn't quite hear it, sir.

Senator HEINZ. Do you see a role for effective import relief in stemming those kinds of job losses, but using existing trade laws?

Ms. BRUNSDALE. That is a policy question—the kind of question that does not come before the ITC.

But let me say it seems to me that the major cause of our trade deficit and our trade problems, by far the major cause, is the high dollar.

Senator HEINZ. But if we solve the dollar problem, would we still have significant trade problems?

Ms. BRUNSDALE. I think the job losses would be greatly ameliorated, and the problems would be much, much less. We would still have some, yes.

Senator HEINZ. Do you believe that there is a need to reform some of our trade remedy laws in order to deal with current conditions of competition, which have contributed to the huge $123 billion trade deficit last year?

Ms. BRUNSDALE. I guess at this moment, Senator, I don't have an independent opinion on that matter. My knowledge on whether there is a need for trade law reform comes primarily from reading newspaper reports of the four studies recently completed in response to the requirements of the 1984 Trade Act.

Senator HEINZ. Let me turn the question around a little bit in view of the large and rising trade deficit, where the facts behind the deficit are heavy casualties in such industries as footwear, apparel, textiles, automobiles. The question is, what role would you, as a commissioner, want to play or expect to play in addressing that very well recognized set of trade problems, where industries are frequently coming at you in several of those instances with 201s?

Ms. BRUNSDALE. The situation you describe is one I am very sympathetic with and I do have some understanding of. A Commissioner, however, is faced with a set of laws which must be implicated as they were written by Congress and signed by the President.

I think the important thing for a commmissioner to do is to see to it that each case is addressed very carefully, so that industries can be confident that there will not be a knee-jerk Yes or a knee-jerk No to their petitions that each case will be decided on its merits. And I would think that, of—for example—Section 201 is at this moment not a credible vehicle of relief to industry—I would think that approach would help give it credibility.

Senator HEINZ. Mr. Chairman, Senator Grassley has a couple of questions, but I will withhold asking them on his behalf until Senator Mitchell has taken his turn.

Senator DANFORTH. All right. Why doesn't Senator Mitchell take his turn now. Does Senator Grassley want those submitted for the answer in writing?

Senator HEINZ. No, he wants two of them asked and the rest in writing.

Senator DANFORTH. Senator Mitchell?

Senator MITCHELL. Thank you, Mr. Chairman.

Ms. Brunsdale, I am sorry that I was not able to come earlier, because I had a prior commitment on the floor. I would like to ask a series of questions, and if any of them have previously been asked in whole or in part, I apologize in advance for the repetition.

I would like to ask you to give me your opinion on the extent to which the current trade imbalance which the United States is experiencing results from unfair trade practices by other nations that either keep U.S. goods out of their countries or subsidize the export of goods to the United States.

Ms. BRUNSDALE. I understand, sir, from experts in the field that the major part of the current trade imbalance results from the high dollar and that a smaller part results from trade barriers.

Senator MITCHELL. Well, are you able to be more specific than "a smaller part"?

Ms. BRUNSDALE. I wouldn't know precisely what percentage.

Senator MITCHELL. I guess that could be anything from zero to 49 percent.

Ms. BRUNSDALE. I've seen percentages in the range of 20 to 30 percent, even higher. And I believe that Mr. Yeutter has said that while there are trade barriers a plenty, it is the strength of the dollar that is the overwhelming problem—much more important than anything else.

Senator MITCHELL. Who is that?

Ms. BRUNSDALE. Ambassador Clayton Yeutter.

Senator MITCHELL. Yeutter?

Ms. BRUNSDALE. Yes.

Senator MITCHELL. Do you agree with him?

Ms. BRUNSDALE. Well, he is more of an expert than I am. I have not studied that question in any depth.

Senator MITCHELL. All right.

Do you believe that the U.S. Government has adequately responded to the use of unfair trade practices by other nations?

Ms. BRUNSDALE. There is apparently a perception on the part of industry that the Government has not responded adequately. Let me say that I have been looking in a different direction in the last few years, so I do not have an independent opinion on the adequacy of the administration's response.

Senator MITCHELL. What can the U.S. Government do to improve its ability to aggressively respond to unfair trade practices by other nations?

Ms. BRUNSDALE. Here again, in responding to this question, I am straying from what would be my proper concern if I were to become an ITC Commissioner. But let me say that reports of Ambassador Yeutter's testimony suggest that he is prepared to be quite aggresive with section 301, and that presumably could make a difference.

Senator MITCHELL. Well, I am more interested in your view if you have one on that subject, as opposed to Ambassador Yeutter's

Ms. BRUNSDALE. I think that the judicious and vigorous use of section 301 could be productive. I honestly do. At the same time, I think we would have to be cautious in that use. As I see it, retaliation has a place in our trade arsenal, but only if we are sure we are retaliating for the right purpose—not simply because we are angry but because we want to open markets—and only if the way in which we retaliate is carefully designed to open the markets, and indeed let us hope it has that effect. Mindless retaliation can only launch a trade war, and that would be very destructive.

Senator MITCHELL. In you opinion, what is the role of the International Trade Commission in responding to our trade problems?

Ms. BRUNSDALE. Well, the International Trade Commission, as I understand it, is primarily a reactive agency; it is not a pro-active agency. It does have, in the case of two of its statutes, the right to initiate cases, but rarely does so. I think its role then, Senator, is mainly to respond expeditiously and thoughtfully to what I would expect to be a larger number of cases coming to it, and I would

expect also that in the conditions we see ahead of us there may even be a larger number of injury findings.

Senator MITCHELL. Ms. Brunsdale, the administration has requested that the Trade Adjustment Assistance Program be allowed to terminate this year. Some analysts view this as a valuable program that has had success for training workers who have lost their jobs due to imports. Others have viewed the program as a safety valve that permits the administration to allow unrestricted imports because workers are then eligible for adjustment assistance.

What is your opinion of this program, and, specifically, do you believe it should be continued or terminated?

Ms. BRUNSDALE. I think I'm right in saying that the administration has requested the discontinuance of Trade Adjustment Assistance partly because it believes the worker trainng part of that program could be handled under title III of the Job Partnership Training Act of 1982. Under title III, private industry does much of the training. Judging from Labor Department material I have reviewed, this program provides much more effective worker training than the Trade Adjustment Assistance program because it is more responsive to the job requirements of industry. Job replacement of 65–70 percent rates are on the order.

There are problems with the TAA Program—benefit delays, training that doesn't lead to jobs, equity issues. There is enough criticism of the program, it seems to me, so that perhaps it is time to try this new approach.

Senator MITCHELL. Do you believe it would ever be approrpriate to provide workers in an import-injured industry trade adjustment assistance as a substitute for section 201 relief?

Ms. BRUNSDALE. Trade adjustment assistance clearly has been regarded as an appropriate alternative for some years, and in my view an effective training program would be not only an appropriate but also a useful part of our trade program.

Senator MITCHELL. Do you consider yourself a free trader?

Ms. BRUNSDALE. Yes—and I would like to expand on that answer. I strongly believe in a free trading system, because I am convinced that such a system can be of great, great benefit to this country and also, clearly, to the world.

Now, we don't have anywhere in this world today a truly free trading system. There are just any number of barriers that have been erected to impede the movement of goods and services across borders. That being so, it is probably more useful to talk about an open trading system and to put a lot of emphasis on the kinds of measures that will make the system more fair and more open, that will succeed in moving our trading system in the direction of freer trade.

Senator MITCHELL. Do you believe it appropriate to restrict the flow of trade into the United States under any circumstances?

Ms. BRUNSDALE. I would rather not, with, however, the exception of the kinds of restrictions that are sanctioned under our current trade laws.

Senator MITCHELL. But those are——

Ms. BRUNSDALE. Those are trade restrictions. That's right.

Senator MITCHELL. Those do describe circumstances under which you believe it would be appropriate.

Ms. BRUNSDALE. Yes. I thought you were talking about an additional set of trade restrictions.

Senator MITCHELL. No, I was not, just to make that clear.

And so what you are saying is that, under the circumstances set forth in the trade laws, if the requirements of the law were met you would favor restricted flow of imports, but not under other circumstances?

Ms. BRUNSDALE. That's right.

Senator MITCHELL. Is that a fair description?

Ms. BRUNSDALE. Yes, sir.

Senator MITCHELL. Thank you.

Under the escape clause provisions of Section 201, current law requires that imports be the "substantial cause," in the direct words of the statute, or injury to a domestic industry. Legislation has been introduced in Congress to modify section 201 so that imports would be the "cause" of injury—the cause of injury as opposed to the substantial cause. This would be consistent with our GATT obligations.

Do you favor or oppose such a change in the law?

Ms. BRUNSDALE. This is the first I have heard of this particular proposal, Senator. I haven't read the bill.

Senator MITCHELL. If you would like to study it and respond in writing, you certainly would be welcome to do so.

Ms. BRUNSDALE. I would appreciate the opportunity to do that.

Senator MITCHELL. All right, fine. Fair enough.

Ms. BRUNSDALE. Thank you.

[The response follows:]

The bill you are referring to is S. 1356. It would amend the causality standard of section 201(b) by striking the words "substantial cause" and inserting in their place the word "cause." Thus the causality standard in 201 cases would be lowered to simply "a cause." The change would appear to alter long-standing policy by making the causality standard in escape-clause cases the same as the standard that applies to unfair trade cases covered by title VII.

Senator MITCHELL. Ms. Brunsdale, I have read your resume, and I think it fair to say that you have not had an extensive background in trade issues. Would you believe that to be an accurate statement?

Ms. BRUNSDALE. Yes.

Senator MITCHELL. Did you involve yourself with trade issues as managing editor of "Regulation" magazine?

Ms. BRUNSDALE. From time to time we have published articles on trade matters, and I have been involved with those articles.

Senator MITCHELL. Do you believe that your lack of background in the trade area will in any way handicap you in the position, if you are confirmed?

Ms. BRUNSDALE. No, sir, I honestly do not. I think my background includes certain kinds of experience that would be very useful, experience that has helped prepare me for analyzing issues, looking at questions very carefully, weighing cause and effect, and so forth. I am confident that with the help of a good professional staff I would be able, if confirmed, to run an effective office.

Senator MITCHELL. As a general rule do you think it desirable that appointees to Government positions have some experience and background in the area that is subject to their jurisdiction?

Ms. BRUNSDALE. Yes. Let me add that there are two kinds of background that are relevant, though. One is specific hands-on experience in the field, and the other is the broader kind of background that comes, in my case, from studying public policy events, studying business, studying industry trends, studying foreign governments, and so forth. I think I have a good deal of this second kind of background and experience.

Senator MITCHELL. But not with respect to trade matters specifically; rather, you are talking about it in a more general sense—public policy and Government relations and so forth?

Ms. BRUNSDALE. Yes.

Senator MITCHELL. Mr. Chairman, I know I have gone over my time. Thank you. Do you have other questions?

Senator DANFORTH. I don't. Do you have more questions?

Senator MITCHELL. If I may have just one moment?

Senator DANFORTH. Sure.

[Pause.]

Senator MITCHELL. Mr. Chairman, I have no further questions at this time. I would like the opportunity to reserve the right to submit further questions to Ms. Brunsdale in writing for her response to writing in addition to those which she has indicated she will respond to in writing.

Senator DANFORTH. Ms. Brunsdale, Senator Mitchell and Senator Grassley, Senator Pryor and perhaps other Senators have asked to submit questions to you in writing, and I hope that is all right with you, so that you could respond in writing for the record.

Ms. BRUNSDALE. Certainly. I would be happy to.

[The questions and answers follow:]

SENATOR PRYOR'S QUESTIONS FOR THE RECORD

1. In determining the effects of imports on a domestic industry, I think we need to pay greater attention to how our competitors have managed to penetrate our markets. As you know, an increase in exports is often due to more than just competitive advantage.

For example, before the ITC reversed itself on the issue of footwear imports, it ruled against domestic manufacturers in spite of clear evidence of foreign tariffs, non-tariff barriers, and a deliberate targeting of the U.S. market.

Again, during consideration of the bromine question, I often had the feeling that full weight was not given to the subsidies provided by our principal competitor—including production subsidies, part-ownership of the production company by the government, export subsidies, and transport on government-owned ships.

Do you believe that the ITC pays enough attention to the competition-distorting practices of our competitors? As far as you can tell, does the ITC receive adequate information on this factor?

2. As your know, the ITC this summer determined that footwear imports, which currently account for 77% of the domestic market, are injuring the nation's footwear industry. In addition, it has recommended to President Reagan that he implement global quotas on imported footwear for five years.

My question is: If you had been a member of the ITC during its consideration of this case, how would you have voted on the "injury" and "remedy" for the domestic footwear industry? What would you recommend to the President?

3. What are your views in the condition of the footwear and textile/apparel industries in 1995?

4. Many of the hundreds of shoe and textile/apparel workers in my state live and work in very small and rural areas, where the closing of a factory obliterates any significant chances for employment in the immediate area. I am concerned and frightened about the future for these individuals who suddenly must either travel to another area to work or must pick up their families and move. Can you offer this

committee any hopeful suggestions on what this government can do to provide a decent chance of employment for these people?

ANSWERS TO QUESTIONS 1 THOURGH 4 FROM SENATOR PRYOR

1. It is, of course, very important that the ITC give careful consideration to the competition-distorting practices that fall within its jurisdiction. These would be subsidies and dumping, which are addressed in Title VII, and the unfair trade practices that are covered in Section 337. I have every reason to believe that the Commission gives the necessary attention to these matters and receives adequate information to support its decisions.

It seems to me the statutes noted above provide useful tools for dealing with what have traditionally been considered unfair trade practices. In addition, Section 201—which is a fair statute—makes available termporary relief to U.S. industries that suffer serious injury from import competition. Finally, Section 301 allows the executive branch to take retaliatory action in an effort to stop competition-distorting parctices such as foreign tariff and non-tariff barriers and deliberate targeting. Judging from press reports, the new USTR can be expected to make increased use of Section 301.

2. The ITC's role in the 201 process is to give the President an objective expert opinion after a thorough investigation. Not having had the opportunity to participate in the ITC hearings or review the extremely long record in that complicated case, I do not believe it would be appropriate for me to comment or possible for me to express an informed view.

3. I'm not an expert on these two industries and therefore am unable to forecast precisely what their condition is liekly to be ten years hence. I do suggest, however, that they will not disappear, as some have predicted. Rather, they will change. Responding to competition and to the strong U.S. comparative advantage in a highly skilled and educated labor force, production will gradually shift from the low-skill end of these industries toward the high-skill end. Thus, the greatest growth in the textile industry is likely to be in high-tech industrial textiles, while in footwear we will probably see expansion through computerized design and production processes.

4. I share your concern about the difficult and painful choices faced by those who become jobless because of plant closings. Without presuming to be fully informed on this policy problem, let me suggest two things.

First, your state enjoys advantages in natural and human resources that should make its communities ripe for new investment. Among these advantages are a good location with respect to energy resources and a people that not only are industrious but are increasingly well-educated because of the state's commitment to quality education. Indeed, on the latter point, I believe Arkansas has been a leader in the movement toward merit pay for teachers and certification of new as well as incumbent teachers. An industrious educated labor force is a valuable asset in this technological age.

Second, as you know, the Senate will soon be holding hearings on the difficult problems of adjustment. In these hearings it will have the opportunity to consider a number of alternatives to Trade Adjustment Assistance, including the Administration's proposal for making use of the Job Partnership Training Act and several interesting Senate bills. This reconsideration may augur well for the future.

Senator DANFORTH. Let me just say a couple of things in closing. First, I want to apologize to you. I want to apologize to you because when I started this hearing I said that to my knowledge you had no particular expertise in the trade area and you don't have any background in it; but I think that your handling of the questions has really been excellent, and it has demonstrated a knowledge of that area which is in the jurisdiction of the International Trade Commission, and I think particularly the questions that were raised by Senator Heinz, which called for a statement of your understanding of the law. I think that your answers to those questions indicated a very good knowledge of the law. So I believed that you were bright and open-minded, and now I believe that you were bright and open-minded and informed. And I want to apologize to you for selling you short.

You know, all of us here on the committee have a sense of exasperation because, like every other issue that faces Congress, we know that we have the answers. I certainly have a very clear view of what I think we should be doing in trade policy; unfortunately, it isn't always shared. Maybe it is never shared by the administration. But I think that some of the questions you have been asked, like should it be a substantial cause or the cause, or whatever, as the injury test of 201, that is a decision which in my opinion we have to decide, and my hope is that you would continue, as you discharge your duties, not to see yourself as the philosopher of trade policy or the creator of trade policy—I am just repeating myself, really—but as a person who will conscientiously discharge your duties, work hard at it, and where relief is called for will recommend relief, and where relief is not called for won't. And that is a decision that can only be made, I think, as the cases arise, but applying the law that is enacted by the Congress.

So I want to congratulate you on your testimony today, wish you well, and we look forward to your answers to the written questions.

Ms. BRUNSDALE. Thank you very, very much, sir.

Senator DANFORTH. I think your sister is with you, as I understand, and your niece?

Ms. BRUNSDALE. There they are.

Senator DANFORTH. I could never guess that she is your sister. [Laughter.]

Ms. BRUNSDALE. I would like to introduce Louise Brunsdale, my sister who is here from Vienna, where she is in the U.S. Embassy. And Nina Grunseth from Minneapolis, who has been an intern with Senator Durenberger this summer.

Senator DANFORTH. Well, great. It is good to see both of you and for you to accompany your relative.

I wish you well, Ms. Brunsdale. Thank you.

That concludes the hearing.

(Whereupon, at 3:32 p.m., the hearing was concluded.)

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